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DOCUMENT A

SHEET 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MANHATTAN SOFTWARE, INC., A  
CALIFORNIA CORPORATION, AND  
STEVEN R. MITCHELL, AN  
INDIVIDUAL,

PLAINTIFFS,

VS.

JEAN KASEM, AN INDIVIDUAL,  
AND LITTLE MISS LIBERTY  
ROUND CRIB COMPANY, INC., A  
CALIFORNIA CORPORATION, AND  
LITTLE MISS LIBERTY BEVERLY  
HILLS, A CALIFORNIA  
CORPORATION, AND LITTLE MISS  
LIBERTY ROUND CRIB COMPANY,  
A TEXAS CORPORATION, AND  
DOES 1 THROUGH 50, INCLUSIVE,

DEFENDANTS.

C O N F I D E N T I A L

(PURSUANT TO AGREEMENT, THIS TRANSCRIPT  
HAS BEEN DESIGNATED CONFIDENTIAL)

DEPOSITION OF RUSSELL LESSER, TAKEN  
ON BEHALF OF THE DEFENDANTS AT 16255  
VENTURA BOULEVARD, SUITE 600, ENCINO,  
CALIFORNIA, COMMENCING AT 10:00 A.M.,  
MONDAY, AUGUST 13, 2001, BEFORE  
TRACY MARIE FOX, RPR, CSR 10449.

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I N D E X

DEPONENT: EXAMINED BY: PAGE:  
RUSSELL LESSER MR. LOEB 7

EXHIBITS FOR IDENTIFICATION:

DEFENDANTS':

145	- ONE-PAGE DOCUMENT ENTITLED: "LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION"	50
146	- ONE-PAGE DOCUMENT ENTITLED: "LIMITED LIABILITY COMPANY - STATEMENT OF INFORMATION"	52
147	- A DOCUMENT ENTITLED: "OPERATING AGREEMENT OF M.W.R.C. INTERNET SALES, L.L.C."	53
148	- DOCUMENT ENTITLED: "NONDISCLOSURE AGREEMENT"	57
149	- DOCUMENT ENTITLED: "SOFTWARE DEVELOPMENT CONTRACT"	64

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APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

BREN CHRISTOPHER CONNER, ESQ.  
222 SHELL STREET  
MANHATTAN BEACH, CALIFORNIA 90266  
(310) 545-0618  
BREN@SIMPLYWEB.NET

FOR THE DEFENDANTS:

KRANE & SMITH  
BY: RALPH C. LOEB, ESQ.  
16255 VENTURA BOULEVARD  
SUITE 600  
ENCINO, CALIFORNIA 91436-2302  
(818) 382-4000  
KRANESMITH@AOL.COM

FOR THE DEPONENT:

BODY GLOVE INTERNATIONAL  
BUSINESS AFFAIRS DIRECTOR, IN-HOUSE COUNSEL  
BY: HILLARY MEISELS, ESQ.  
201 HERONDO STREET  
REDONDO BEACH, CALIFORNIA 90277  
(310) 374-3441  
WWW.BODYGLOVE.COM

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I N D E X (CONTINUED):

EXHIBITS FOR IDENTIFICATION:

DEFENDANTS':

150	- DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT"	75
151	- DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT"	80
152	- DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT"	83
153	- ONE-PAGE LETTER DATED MS. MEISELS TO MR. LOEB DATED APRIL 30TH, 2001	85
154	- DOCUMENT LOG	111

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SHEET 3

1 A. I DON'T REMEMBER EXACTLY. WHATEVER THE  
2 CHECK RECORD SHOWS. YOU CAN SEE WHEN THE CHECKS  
3 WERE WRITTEN. I CAN'T REMEMBER THE EXACT DATE.  
4 Q. ARE YOU FAMILIAR WITH SOMETHING CALLED  
5 "PURCHASE COORDINATOR"?  
6 A. YES.  
7 Q. WHEN'S THE FIRST TIME YOU HEARD PURCHASE  
8 COORDINATOR?  
9 MR. CONNER: OBJECTION; VAGUE.  
10 THE DEPONENT: WELL, HEARD ABOUT IT OR THE  
11 CONCEPT? I DON'T KNOW WHAT YOU MEAN.  
12 BY MR. LOEB:  
13 Q. THE CONCEPT.  
14 A. '97.  
15 Q. AND THAT WAS SOMETHING THAT MR. MITCHELL  
16 TOLD YOU AT THAT TIME?  
17 A. HE -- WE TALKED IN GENERAL TERMS ABOUT  
18 HOW I HAD THIS CONCERN ABOUT HOW THESE E-COMMERCE  
19 SYSTEMS COULD POSSIBLY WORK, BECAUSE THEY WEREN'T  
20 MAKING ANY MONEY. AND THIS WAS NOT THE WAY I WAS  
21 TAUGHT IT WORKED IN SCHOOL  
22 AND HE SAID HE WAS -- AN IDEA THAT COULD  
23 WORK, AND IT WAS VERY GENERAL. I DON'T THINK THE  
24 WORD "PURCHASE COORDINATOR" CAME UP AT THAT TIME,  
25 BUT THE CONCEPT WAS DISCUSSED.

18

1 HAS SO FAR DESIGNATED THE ENTIRE TRANSCRIPT  
2 CONFIDENTIAL.  
3 THE DEPONENT: THAT'S FINE. BUT THIS IS  
4 STUFF I'VE SPENT MONEY ON, AND I'M NOT -- I DON'T  
5 FEEL FREE TO JUST TELL ANYBODY. SO...  
6 MS. MEISELS: AND YOU DIDN'T AGREE THAT IT  
7 WAS CONFIDENTIAL. AND EVEN CONFIDENTIAL OR NOT,  
8 WE'RE STILL NOT GOING TO GET INTO ANY TRADE SECRET  
9 OR PRIVILEGED INFORMATION AS WE DISCUSSED, SO...  
10 MR. LOEB: UH-HUH.  
11 CAN YOU READ BACK FOR ME THE LAST  
12 QUESTION BEFORE THE WHOLE COLLOQUY TOOK PLACE.  
13 (THE RECORD WAS READ AS FOLLOWS:  
14 Q. WHAT WERE THE CONCERNS YOU HAD?)  
15 THE DEPONENT: I SAID THAT MOST OF THE  
16 E-COMMERCE SYSTEMS I HAD SEEN WERE NOT FINANCIALLY  
17 VIABLE, I DIDN'T THINK.  
18 MS. MEISELS: THAT WAS NOT THE QUESTION  
19 THAT HE RESPONDED "YES" TO. I DON'T KNOW IF IT'S  
20 BECAUSE WE WENT TO AN INCORRECT PLACE.  
21 BUT IF I MIGHT PARAPHRASE SOMETHING ABOUT  
22 DID MR. MITCHELL SPECIFICALLY ADDRESS YOUR CONCERNS  
23 AND TELL YOU WAYS HE THOUGHT THE SYSTEM COULD MAKE  
24 MONEY?  
25 THAT'S THE QUESTION TO WHICH MR. LESSER

20

1 Q. WHAT DO YOU RECALL MR. MITCHELL TELLING YOU  
2 AT THAT TIME?  
3 A. HE HAD A SYSTEM HE WAS WORKING ON -- HE HAD  
4 A SYSTEM HE WAS WORKING ON --  
5 Q. AND NOTHING --  
6 A. -- WHERE E-COMMERCE -- THAT WOULD SOLVE THE  
7 CONCERNS I HAD.  
8 Q. WHAT WERE THE CONCERNS YOU HAD?  
9 A. THEY WEREN'T MAKING ANY MONEY. THEY WERE  
10 UNPROFITABLE. I COULDN'T UNDERSTAND HOW THEY COULD  
11 KEEP MAKING MONEY. AND IT TURNS OUT, I GUESS, I WAS  
12 RIGHT. THEY DIDN'T, SO -- MOST OF THEM.  
13 Q. AT THAT TIME IN 1997, DID MR. MITCHELL  
14 TELL YOU HOW HE THOUGHT HIS CONCEPT WOULD BE ABLE  
15 TO ALLOW MONEY TO BE MADE FROM E-COMMERCE?  
16 A. WELL, I'M -- ARE WE GETTING INTO A TRADE  
17 SECRET THAT WE'RE WORKING ON?  
18 MS. MEISELS: WE'RE GETTING THERE, BUT I'M  
19 WAITING FOR HIM TO CROSS THE LINE.  
20 THE DEPONENT: WELL, I THINK THAT HE'S  
21 CROSSED THE LINE.  
22 MS. MEISELS: IT'S JUST A "YES" OR "NO"  
23 QUESTION. YOU DON'T HAVE TO GIVE HIM ANY DETAIL.  
24 THE DEPONENT: YES.  
25 MR. LOEB: WHAT ALSO MR. CONNER REMEMBERS

19

1 RESPONDED "YES." AND THAT'S WHY I ALLOWED HIM TO  
2 ANSWER, BECAUSE IT WAS A "YES" OR "NO," AND DID NOT  
3 GO INTO THE DETAILS OF THE SYSTEM.  
4 BY MR. LOEB:  
5 Q. WHAT DID MR. MITCHELL TELL YOU ABOUT THE  
6 SYSTEM IN 1997?  
7 A. ISN'T THAT THE SAME QUESTION IN A DIFFERENT  
8 WEIGH?  
9 Q. NO.  
10 I'M ASKING YOU WHAT HE TOLD YOU.  
11 A. I'M SAYING THAT HE TOLD ME THAT HE HAD A  
12 SYSTEM THAT SOLVED MY CONCERNS.  
13 Q. AND YOU DON'T RECALL HIM TELLING YOU  
14 ANYTHING MORE THAN THAT?  
15 A. I DON'T REMEMBER THE SPECIFIC DETAILS.  
16 Q. IN GENERAL, DO YOU REMEMBER ANYTHING  
17 FURTHER?  
18 A. THIS WAS A COCKTAIL PARTY IN THE 1997 AT  
19 THE DICKENS' DINNER AT THE BILTMORE HOTEL  
20 Q. WHAT'S THE NEXT CONTACT THAT YOU HAD  
21 WITH MR. MITCHELL ABOUT THIS CONCEPT THAT HE HAD  
22 FOR E-COMMERCE?  
23 A. LET'S SEE, PROBABLY -- I DON'T REMEMBER  
24 EXACTLY. I BELIEVE IT WAS ABOUT -- AFTER HE CEASED  
25 THE WORKING WITH JEAN KASEM. SO -- IT WAS AFTER WE

21